

*** PUBLIC VERSION ***

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

ZACKARY ELLIS SANDERS,

Defendant.

Case No. 1:20-cr-00143

Honorable T.S. Ellis, III

Sentencing: April 1, 2022

NOTICE OF FILING OF TWO SUPPLEMENTAL EXHIBITS

Zackary Ellis Sanders, by and through undersigned counsel, respectfully submits the attached notice of filing of two supplemental exhibits to his Motion for New Trial and to Reconsider Motions to Compel and Motions to Suppress (ECF No. 585), which was filed on March 14, 2022. The attached prosecution report and sentencing transcript for a Canadian individual named Tyler Walker, one of the purported creators of the target website, [REDACTED], were not received by the defense until March 15, 2022, the day after the defense filed its motion for a new trial. *See* Report to Crown Counsel, attached as Ex. 1; Sentencing Transcript, attached as Ex. 2.

On March 15, 2022, the defense received these two documents pertaining to Mr. Walker's case (Ex. 1, Ex. 2), which stemmed from "joint" investigation of [REDACTED] between Canadian and U.S. law enforcement. *See, e.g.*, [REDACTED] News Story 1 (ECF No. 476-1), [REDACTED] News Story 2 (ECF No. 476-2), [REDACTED] News Story 3 (ECF No. 476-3). These documents further corroborate that U.S. law enforcement was investigating [REDACTED], along with other international partners (which included the [REDACTED])

[REDACTED], for years before the [REDACTED]'s tip purportedly launched investigations into the Sanders family's IP address, among many others.

The Report to Crown Counsel (Ex. 1), dated [REDACTED], provides additional evidence about the joint nature of U.S. law enforcement's investigation of [REDACTED] and other Tor websites with foreign partners. The Sentencing Transcript (Ex. 2) makes clear that one of the websites in question was [REDACTED]. *Id.* at 3. The newly discovered material also establishes that the U.S. was the country that obtained the passwords and encryption and signature keys. This fact makes it more likely both that a Network Investigative Technique (NIT) was used to seize Mr. Sanders's IP address, and that the U.S., at minimum, facilitated the NIT's deployment by providing the necessary prerequisites (*i.e.*, administrator access) to law enforcement in another country.

The newly discovered prosecution report and transcript contains abundant evidence of the joint nature of the investigation into [REDACTED]. As part of the [REDACTED]
[REDACTED] on [REDACTED] (almost three years before Mr. Sanders
was alleged to have visited [REDACTED]), a [REDACTED]
[REDACTED]
[REDACTED]

Ex. 1

(Report to Crown Counsel) at 3.² The [REDACTED] partners informed Canadian law enforcement that [REDACTED]

¹ [REDACTED]

² [REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 3. On [REDACTED]
provided [REDACTED] with information about a particular posting. *Id.* at 3. On [REDACTED], [REDACTED]
[REDACTED]. *Id.* at 4. On [REDACTED], other individuals who were involved in
online activities with Mr. Walker—including Benjamin Faulkner and Patrick Falte—were
arrested in the United States. *Id.* at 5; *see also* *United States v. Benjamin Faulkner and Patrick
Falte*, Case No. 3:17-CR-00049-JAG (E.D. Va., Oct. 4, 2016) (Criminal Complaint). Those
individuals [REDACTED]

[REDACTED] Ex. 1 (Report to Crown Counsel) at 5. U.S. law
enforcement (and its partners) would then have had the ability to take control of—and deploy
NITs on—websites that they had the passwords, encryption, and signature keys to. If a foreign
law enforcement agency, not an American one, deployed the NIT to identify IP addresses, then it
was able to do so only because of the information that U.S. law enforcement obtained and
provided to it. Notably, the U.S. chose to engage in this joint venture with another country
instead of shutting [REDACTED] down—which the U.S. could have immediately done—thereby
allowing the site to operate for an additional two-plus years.

Discovery of new content on those individuals' seized devices prompted additional
cooperative investigative work between the U.S., Canada, and [REDACTED]. *Id.* at 5. On
[REDACTED], [REDACTED] [REDACTED]
[REDACTED] *Id.* at 6. On [REDACTED], the [REDACTED]
[REDACTED]
[REDACTED] *Id.* at 7 (emphasis added). This information included

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 8. That same day, [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 8. [REDACTED]
[REDACTED]
[REDACTED]

Id. at 8.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 8.³ This resulted in the subsequent receipt of additional information. *Id.* at 8-10. For example, at some point later in [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 10.

³ Law enforcement also investigated Mr. Walker's involvement in [REDACTED] *id.* at 23, including [REDACTED] Ex. 2 (Sentencing Transcript) at 3.

⁴ NCECC stands for National Child Exploitation Coordination Centre, which is located in Canada. *Online child sexual exploitation*, Royal Canadian Mounted Police (Oct. 7, 2019), available from <https://www.rcmp-grc.gc.ca/en/online-child-sexual-exploitation> (last accessed Mar. 17, 2022).

⁵ [REDACTED]

Together, the prosecution report (Ex. 1) and sentencing transcript (Ex. 2) thoroughly corroborate the evidence already in the record demonstrating the investigation of Tor child pornography sites, including [REDACTED], and individuals connected to those sites, was conducted as a joint venture. In addition, the fact that individuals [REDACTED] [REDACTED] to U.S. law enforcement, Ex. 1 (Report to Crown Counsel) at 5, makes it probable that it was the U.S. that enabled another country to seize the IP addresses, through the use of an NIT, of individuals who accessed or visited any of those sites. This is contrary to what Paragraph 25 of the Affidavit (ECF No. 254-3) represented and what the government has suggested throughout the course of litigating Mr. Sanders's motions to compel and motions to suppress.⁶ ECF No. 588 at 2-3, 7-11.

⁶ Gemma Davies, *Shining a Light on Policing of the Dark Web: An Analysis of UK Investigatory Powers*, The Journal of Criminal Law, 407, 430 (2020), available from https://nrl.northumbria.ac.uk/id/eprint/43208/1/GD_Policing_the_dark_web_submitted.pdf (last accessed Mar. 17, 2022); see also First Decl. of Matthew Ryder, QC (ECF No. 254-7) at ¶¶ 7-17; see also Second Decl. of Matthew Ryder, QC (ECF No. 254-8) at ¶¶ 4-15; see also Murdoch Decl. (ECF No. 467-2) at ¶¶ 22-28, 32; compare with FLA Letter (ECF No. 253-2) (referring to two TEI warrants).

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March 2022, the foregoing was served electronically on the counsel of record through the US District Court for the Eastern District of Virginia Electronic Document Filing System (ECF) and the document is available on the ECF system.

/s/ Jonathan Jeffress
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